

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROLINE ANGULO, a single person, ERIC KELLER, a single person, and ISABEL LINDSEY and CHARLES LINDSEY, a married couple,

Plaintiffs,

V.

PROVIDENCE HEALTH & SERVICES
WASHINGTON, a non-profit Washington
Corporation, also d/b/a PROVIDENCE ST.
MARY MEDICAL CENTER; DR. JASON A.
DREYER, DO, and JANE DOE DREYER,
husband and wife and the marital community
thereof; DR. DANIEL ELSKENS DO, and JANE
DOE ELSKENS, husband and wife and the
marital community thereof; and JOHN/JANE
DOES 1-10, and any marital communities thereof,

Defendants.

No. C22-0915JLR

**STIPULATED MOTION AND
[PROPOSED] STIPULATED
PROTECTIVE ORDER**

NOTE ON MOTION CALENDAR: April 20, 2023

Plaintiffs and Defendants, by and through their undersigned counsel, and pursuant to the
s Order dated April 13, 2023, respectfully move for entry of the following [Proposed]
ated Protective Order, to expedite and facilitate the production of confidential, proprietary,
ate information for which special protection from public disclosure and from use for any
e other than prosecuting and defending this litigation would be warranted, pursuant to
. Civ. P. 26(c). *See* Order (Dkt. 72). Pursuant to LCR 26(c)(2), the parties began with the
ATED MOTION AND [PROPOSED] STIPULATED
CTIVE ORDER – 1
-0915JLR

1 District's Model Protective Order, and have identified departures from the model in a redlined
2 copy, attached as Exhibit 1.

3 **I. STIPULATION**

4 **1. PURPOSES AND LIMITATIONS**

5 Discovery in this action is likely to involve production of confidential, proprietary,
6 private, or protected health information for which special protection may be warranted. The
7 parties acknowledge that this agreement does not confer blanket protection on all disclosures or
8 responses to discovery; the protection it affords from public disclosure and use extends only to
9 the limited information or items that are entitled to confidential treatment under applicable legal
10 principles, and it does not presumptively entitle parties to file confidential information under
11 seal.

12 **2. "CONFIDENTIAL MATERIAL"**

13 "Confidential Material" shall include the following information, documents, and tangible
14 things produced or otherwise exchanged: (1) personal and private information regarding
15 Plaintiffs and potential class members, including current and former street addresses for natural
16 persons, social security numbers, telephone numbers, email addresses, dates of birth, driver's
17 license numbers, account numbers, maiden names, passwords, "health care information" within
18 the meaning of RCW Ch. 70.02, and "protected health information" within the meaning of the
19 Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (2) confidential
20 business and financial information, and (3) any information the producing party is obligated by
21 contract or state, federal, or other law to keep confidential.

22 **3. SCOPE**

23 The protections conferred by this agreement cover not only Confidential Material (as
24 defined above), but also (1) any information copied or extracted from such material; (2) all
25 copies, excerpts, summaries, or compilations of such material; and (3) any testimony,
26 conversations, or presentations by parties or their counsel that might reveal such material.

27 However, except as required by HIPAA, RCW Ch. 70.02, or either statute's

1 implementing regulations, the protections conferred by this agreement do not cover information
2 that (a) is in the public domain through trial or otherwise; (b) any non-producing party owns or
3 lawfully possesses or obtains lawfully and properly through its own investigation or other means
4 (i.e., not from the producing party); or (c) is produced without a confidentiality designation,
5 except as otherwise provided in this agreement (*see, e.g.*, Section 5.3 below) or as otherwise
6 stipulated or ordered.

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use Confidential Material that is
9 disclosed or produced by another party or by a non-party in connection with this case only for
10 prosecuting, defending, or attempting to settle this litigation. Confidential Material may be
11 disclosed only to the categories of persons and under the conditions described in this agreement.
12 Confidential Material must be stored and maintained by a receiving party at a location and in a
13 secure manner that ensures that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of Confidential Material. Unless otherwise ordered by the Court or
15 permitted in writing by the designating party, a receiving party may disclose any Confidential
16 Material only to:

17 (a) counsel of record in this action (including in-house counsel and legal
18 department staff of any party), as well as employees or contract employees of counsel to whom it
19 is reasonably necessary to disclose the information for this litigation;

20 (b) officers, directors, and employees of Providence Health & Services and
21 Providence Health & Services – Washington to whom disclosure is reasonably necessary for this
22 litigation;

23 (c) experts and consultants to whom disclosure is reasonably necessary for
24 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A);

26 (d) the Court, court personnel, and court reporters and their staff, including
27 any court reporter, videographer reporting or third party who is necessary to resolve a

1 technological issue during a deposition that court reporters, videographers, and their staff are
2 unable to resolve;

3 (e) copy or imaging services or e-discovery vendors retained by counsel to
4 assist in the duplication, storage, or analysis of Confidential Material, provided that counsel for
5 the party retaining the copy or imaging service instructs the service not to disclose any
6 Confidential Material to third parties and to immediately return or destroy all originals and
7 copies of any Confidential Material;

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
10 (Exhibit A), unless otherwise agreed by the designating party, or ordered by the Court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must
12 be separately bound in any hard copy transcript and separately compiled in any electronic
13 transcript by the court reporter and may not be disclosed to anyone except as permitted under this
14 agreement;

15 (g) mediators or settlement officers, and their supporting personnel, hired or
16 appointed to address any issue(s) in the litigation;

17 (h) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information;

19 (i) professional jury or trial consultants, mock jurors, and professional
20 vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
21 "Acknowledgement and Agreement to Be Bound" (Exhibit A);

22 (j) other persons by written agreement of the designating party.

23 4.3 Filing Confidential Material. Before filing Confidential Material or discussing or
24 referencing such material in court filings, the filing party shall confer with the designating party,
25 in accordance with LCR 5(g)(3)(A), to determine whether the designating party will remove the
26 confidential designation, whether the document can be redacted, or whether a motion to seal or
27 stipulation and proposed order is warranted. During the meet and confer process, the designating

1 party must identify the basis for sealing the specific confidential information at issue, and the
 2 filing party shall include this basis in its motion to seal, along with any objection to sealing the
 3 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
 4 the standards that will be applied when a party seeks permission from the court to file material
 5 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
 6 requirements of LCR 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to
 7 satisfy this requirement will result in the motion to seal being denied, in accordance with the
 8 strong presumption of public access to the Court's files.

9 4.4 Uniform Health Care Information Act. Notwithstanding any of the other
 10 provisions herein, any party who seeks discovery that would require the disclosure of health care
 11 information must comply with RCW Ch. 70.02, including RCW 70.02.060.

12 4.5 HIPAA. Notwithstanding any of the other provisions herein, to the extent
 13 protected health information is sought from a non-party, the Party seeking such information must
 14 comply with HIPAA and associated regulations.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
 17 or non-party that designates information or items for protection under this agreement must take
 18 care to limit any such designation to specific material that qualifies under the appropriate
 19 standards. The designating party must designate for protection only those materials, documents,
 20 items, or oral or written communications that qualify, so that other materials, documents, items,
 21 or communications for which protection is not warranted are not swept unjustifiably within the
 22 ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 24 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 25 unnecessarily encumber or delay the case development process or to impose unnecessary
 26 expenses and burdens on other parties) may expose the designating party to sanctions.

27 If it comes to a designating party's attention that information or items that it designated
 STIPULATED MOTION AND [PROPOSED] STIPULATED
 PROTECTIVE ORDER – 5
 No. C22-0915JLR

1 for protection do not qualify for protection, the designating party must promptly notify all other
2 parties that it is withdrawing the mistaken designation and, if necessary, reproduce any materials
3 so that they reflect the corrected designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (*see, e.g.*, Section 5.3 below), or as otherwise stipulated or ordered, disclosure of
6 discovery material that qualifies for protection under this agreement must be clearly so
7 designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (e.g., paper or electronic documents
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
10 proceedings) the designating party must affix the word “CONFIDENTIAL” on each page of the
11 document if feasible.

12 (b) Testimony given in deposition or in other pretrial proceedings: the parties
13 and any participating non-parties may identify on the record, during the deposition or other
14 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
15 testimony after reviewing the transcript. Any party or non-party may, within thirty (30) days
16 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of
17 the transcript, or exhibits thereto, as Confidential Material under this agreement. Until the
18 expiration of the 30-day period for designation, any deposition transcript shall be treated as if it
19 had been designated “CONFIDENTIAL” in its entirety, unless otherwise agreed.

20 If a party or non-party desires to protect confidential information at trial, the issue should
21 be addressed during the pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place
23 on the exterior of the container or containers in which the information or item is stored
24 “CONFIDENTIAL” or otherwise clearly communicate to the receiving party the confidentiality
25 designation. If only a portion or portions of the information or item warrant protection, the
26 producing party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If promptly corrected, an inadvertent failure to
STIPULATED MOTION AND [PROPOSED] STIPULATED
PROTECTIVE ORDER – 6
No. C22-0915JLR

1 designate qualified information, documents, or items does not, standing alone, waive the
2 designating party's right to secure protection under this agreement for such material. Upon
3 prompt correction of a designation, the receiving party must make reasonable efforts to ensure
4 that the material is treated in accordance with the provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
7 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
9 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
10 challenge a confidentiality designation by electing not to mount a challenge promptly after the
11 original designation is disclosed.

12 6.2 Meet and Confer. Each party reserves the right to dispute, by motion to the Court,
13 the confidential status claimed by any party. Parties shall confer prior to filing the motion, and
14 must make every attempt to resolve any dispute regarding confidential designations without
15 Court involvement. Any motion regarding confidential designations or for a protective order
16 must include a certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in an effort to
18 resolve the dispute without Court action. The certification must list the date, manner, and
19 participants to the conference. A good faith effort to confer requires a face-to-face meeting,
20 videoconference, or a telephone conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court
22 intervention, and in addition to ¶ 6.2 above, the designating party may follow the Court's
23 procedures regarding discovery disputes, including if necessary by filing and serving a motion to
24 retain confidentiality under LCR 7 (and in compliance with LCR 5(g), if applicable).

25 6.4 Burden of Proof. The burden of persuasion in any motions filed under ¶ 6.2 or ¶
26 6.3 shall be on the designating party. Frivolous challenges, and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the challenging party to sanctions. All parties shall continue to maintain the material in
2 question as confidential until the Court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION OR PROCEEDINGS

5 If a party is served with a subpoena or a court order issued in other litigation, regulatory,
6 or other proceedings that compels disclosure of any Confidential Material, that party must:

7 (a) promptly notify the designating party in writing and include a copy of the
8 subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena or order is
11 subject to this agreement. Such notification shall include a copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the designating party whose Confidential Material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, Confidential Material has
16 been disclosed to any person or in any circumstance not authorized under this agreement by the
17 receiving party's action or inaction, the receiving party must immediately (a) notify in writing
18 the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all
19 unauthorized copies of the protected material, (c) inform the person or persons to whom
20 unauthorized disclosures were made of all the terms of this agreement, and (d) request that such
21 person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached
22 hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not intended
STIPULATED MOTION AND [PROPOSED] STIPULATED
PROTECTIVE ORDER – 8
No. C22-0915JLR

1 to modify whatever procedure may be established in an e-discovery order or agreement that
2 provides for production without prior privilege review. The parties agree to the entry of a non-
3 waiver order under Fed. R. Evid. 502(d) as set forth herein.

4 10. NON-TERMINATION AND RETURN OF CONFIDENTIAL MATERIAL

5 Within 30 days after the termination of this action, including all appeals, each receiving
6 party must return to the producing party or destroy all Confidential Material, including all copies,
7 extracts, and summaries thereof.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
9 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
11 work product, even if such materials contain Confidential Material.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, this 20th day of April,
15 2023.

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19 PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO

20 ORDERED.

21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
22 documents, electronically stored information (ESI) or information, whether inadvertent or
23 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
24 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
25 documents, including the attorney-client privilege, attorney work-product protection, or any
26 other privilege or protection recognized by law. This Order shall be interpreted to provide the
27 maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)

STIPULATED MOTION AND [PROPOSED] STIPULATED
PROTECTIVE ORDER – 10
No. C22-0915JLR

1 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to
2 conduct a review of documents, ESI or information (including metadata) for relevance,
3 responsiveness and/or segregation of privileged and/or protected information before production.
4 Information produced in discovery that is protected as privileged or work product shall be
5 immediately returned to the producing party.

6 DATED: April 20, 2023.

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James L. Robart
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, declare under penalty of perjury that I
4 have read in its entirety and understand the Stipulated Protective Order that was issued by the
5 United States District Court for the Western District of Washington on July 29, 2022 in the case
6 of Angulo, et al., v. Providence Health & Services – Washington, et al., No. C22-0915JLR. I
7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
8 understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
10 any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

15 || Date:

16 | City and State where sworn and signed:

17 Printed name:

18 || Signature: